

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)

Petition of Intrado Communications of Virginia)
for Arbitration Pursuant to Section 252(b) of the)
Communications Act of 1934 to Establish an)
Interconnection Agreement with Verizon South)
Inc. and Verizon Virginia Inc.)

WC Docket No. 08-185

Petition of Intrado Communications of Virginia)
For Arbitration Pursuant to Section 252(b) of)
the Communication Act of 1934 to Establish)
an Interconnection Agreement with Central)
Telephone Company of Virginia and United)
Telephone—Southwest, Inc. (Collectively,)
“Embarq”))

WC Docket No. 08-33

**JOINT REPLY COMMENTS OF THE TEXAS COMMISSION ON STATE
EMERGENCY COMMUNICATIONS, THE TEXAS 9-1-1 ALLIANCE, THE TEXAS
MUNICIPAL EMERGENCY COMMUNICATION DISTRICTS ASSOCIATION, THE
NATIONAL EMERGENCY NUMBER ASSOCIATION, AND THE ASSOCIATION OF
PUBLIC-SAFETY COMMUNICATIONS OFFICIALS INTERNATIONAL, INC.**

The Texas Commission on State Emergency Communications,¹ the Texas 9-1-1 Alliance,² the Texas Municipal Emergency Communication Districts Association,³ (collectively referred to as the “Texas 9-1-1 Entities”), the National Emergency Number Association

¹ The Texas Commission on State Emergency Communications (“CSEC”) is a state agency created pursuant to Texas Health and Safety Code Ann. Chapter 771, and is the state authority on emergency communications. CSEC oversees the implementation of 9-1-1 service provided by Texas’ 24 Councils of Government, which serve approximately two-thirds of the geographic area of Texas and one-third of its population.

² The Texas 9-1-1 Alliance is an interlocal cooperation entity composed of 24 Texas Emergency Communication Districts with E9-1-1 service and public safety responsibility for approximately 53% of the population of Texas. These districts were created pursuant to Texas Health and Safety Code Chapter 772.

³ The Texas Municipal Emergency Communication Districts Association is an association of 27 emergency agency communication districts as defined in Texas Health and Safety Code Chapter 771.

("NENA"),⁴ and the Association of Public-Safety Communications Officials International, Inc. ("APCO")⁵ (collectively referred to as the "Joint Public Safety 9-1-1 Entities") respectfully submit these joint reply comments in response to the Federal Communications Commission's ("FCC's") public notice seeking comment on the competitive provision of 9-1-1 network services presented by the above-captioned consolidated arbitration proceedings in Virginia.⁶

I.

Joint Reply Comments

The Joint Public Safety 9-1-1 Entities believe that the initial comments of all parties commenting on the public notice demonstrate that the Commission should resolve as appropriate the immediate dispute among the parties involved in the above-captioned proceedings⁷ and then, as urged in the initial comments of the Joint Public Safety 9-1-1 Entities, immediately begin a "local competition"⁸ type proceeding for 9-1-1 network services. Initiating such a proceeding would provide a solid foundation for the Commission to provide needed guidance and certainty

⁴ NENA is ^{The Voice of 9-1-1.™} NENA promotes implementation and awareness of 9-1-1 as North America's universal emergency number and is the leading professional non-profit organization dedicated solely to 9-1-1 emergency communications issues. NENA serves its nearly 7,000 members in 48 chapters across the U.S., Canada and Mexico through policy advocacy, establishment of technical and operational standards, Next Generation 9-1-1 development, certification programs and a broad spectrum of educational offerings. More information about NENA is available at www.nena.org.

⁵ APCO is the nation's oldest and largest public safety communications organization. Founded in 1935, APCO has nearly 16,000 members, most of whom are state or local government employees who design, manage, and operate public safety communications systems for police, fire, emergency medical, forestry conservation, highway maintenance, disaster relief, and other public safety agencies.

⁶ WC Docket Nos. 08-33 and 08-185, "Comment Sought on Competitive Provision of 911 Service Presented by Consolidated Arbitration Proceedings," DA 09-1292 (June 4, 2009).

⁷ We understand that the parties to this particular Virginia arbitration may wish to separate such a comprehensive rulemaking from their individual litigation.

⁸ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 15509 (1996).

in an increasingly complex and uncertain regulatory environment concerning the ongoing modernization of current 9-1-1 networks toward Internet Protocol-enabled (“IP-enabled”) 9-1-1 and Next Generation 9-1-1 (“NG9-1-1”) systems.⁹ The Commission’s role in providing a forum in a “local competition” type proceeding for all stakeholders to participate fully is particularly important because public safety entities are generally not parties in arbitration proceedings. Moreover, it is also unclear whether such agreements between competing carriers constitute agreements subject to state public interest review pursuant to Section 252(a)(1).¹⁰ This is important because 9-1-1 is a core public interest priority for the FCC and state public utilities commissions (“PUCs”). In essence, when a competitor 9-1-1 network provider becomes the sole 9-1-1 network provider displacing an entire 9-1-1 tandem or access to a PSAP from a given rate center, the competitor may be viewed in some respects similar to an ILEC performing the same role and requiring some core public interest oversight.¹¹ As AT&T appropriately urged in its initial comments, “when the subject matter before the Commission is 911/E911 emergency

⁹ References to “IP-based” or “IP-enabled” 9-1-1/E9-1-1 systems refer to enhancements to current 9-1-1/E9-1-1 systems using Internet Protocol (IP) technology. References to NG9-1-1 refer to a system that replaces the current E9-1-1 system that is comprised of new hardware, software, data and operational policies and procedures enabling the receipt of 9-1-1 calls and messages and the sharing of such calls and messages with other authorized entities.

¹⁰ See, *In the Matter of Qwest Communications International Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Commercial Contractual Arrangements under Section 252(a)(1)*, WC Docket No. 02-89, Memorandum Opinion and Order, 17 FCC Rcd 19337, 19340 at ¶ 7 (2002) (granting in part, and denying in part petition for declaratory ruling) (“We grant in part and deny in part Qwest’s petition for a declaratory ruling. In issuing this decision, however, we believe that the state commissions should be responsible for applying, in the first instance, the statutory interpretation we set forth today to the terms and conditions of specific agreements. Indeed, we believe this is consistent with the structure of section 252, which vests in the states the authority to conduct fact-intensive determinations relating to interconnection agreements”).

¹¹ Cf., 47 U.S.C. § 251(h)(2) [(“(2) Treatment of comparable carriers as incumbents. The Commission may, by rule, provide for the treatment of a local exchange carrier (or class or category thereof) as an incumbent local exchange carrier for purposes of this section if –(A) such carrier occupies a position in the market for telephone exchange service within an area that is comparable to the position occupied by a carrier described in paragraph (1); (B) such carrier has substantially replaced an incumbent local exchange carrier described in paragraph (1); and (C) such treatment is consistent with the public interest, convenience, and necessity and the purposes of this section.”]; see also, Joint Comments of the Texas Commission on State Emergency Communications, the Texas 9-1-1 Alliance, the Texas Municipal Emergency Communication Districts Association, the National Emergency Number Association, and the Association of Public-Safety Communications Officials International, Inc. at p. 6, fn 19.

network services and the life and property-saving missions those services support, public safety must take precedence over other interests.”¹²

The initial comments of other parties pointed out some of the major important substantive technical, operational, policy, and legal issues deserving careful attention and full detailed evaluation in a Commission “local competition” type proceeding for 9-1-1 network services. These issues include: (1) proper and equitable obligations of all service providers and the demarcation points between those service providers, other service providers, and public safety agencies;¹³ (2) balance of responsibilities between local, state, and federal governmental authorities in ensuring the integrity of the 9-1-1 network;¹⁴ (3) procedures and processes to incorporate connection to the new 9-1-1 network provider and the disconnection from the prior 9-1-1 network provider and the related database transition and management issues;¹⁵ (4) critically

¹² Comments of AT&T, Inc., at p. 3 (“Thus, to the extent there is any tension between the 1996 Act’s market competition goals and the public safety mission established in Section 1 of the Communications Act, the Commission should resolve that tension in favor of public safety”).

¹³ See, e.g., Comments of the Washington State Enhanced 911 Program, at p. 3 (stating that the FCC “should make clear that all service providers have an obligation, to, at their expense, connect to the 9-1-1 networks with both the call and the associated data elements delivered to the 9-1-1 system”); see also Comments of the Virginia Telecommunications Industry Association, at p. 3 (“As the Commission considers policies and rules for the provision of competitive 911 services, it must ensure that the rules are competitively neutral and that a new entrant does not gain its competitive advantage merely by shifting costs to third-parties, such as Citizens, or to the previous 911 provider”); see also Comments of Verizon, at p. 6 (“Intrado is further attempting to shift its 911 costs to other carriers and gain an unfair competitive advantage in marketing its services to local 911 authorities”).

¹⁴ See Comments of the Public Utilities Commission of Ohio, at p. 6 (stating that “there is legitimate concern regarding how the existence and operations of a competitive 911 carrier affects the public interest in a reliable, efficient and effective 911 network” and stating that “[w]hile the FCC has recognized this public interest in requiring VoIP providers to provide access to 911 and E911 services, the primary responsibility for ensuring the availability of 911 and E911 networks has been vested in the States” [footnote in original quotation omitted]); see also Comments of Verizon, at p. 8 (“The Commission should avoid disrupting such efforts or otherwise treading on the authority over 911 policies and practices the states have been granted by their legislatures”); see also Comments of Intrado Inc. and Intrado Communications of Virginia, Inc., at p. 23 (“Each of these sources of authority – the fundamental mandate to promote public safety through wired and wireless technologies, the expansive plenary number authority, and the repeated statutory instructions to promote and oversee a unified, technology-progressive enhanced 911 network – afford the Commission substantial latitude in shaping the next-generation 911/E911 system”).

¹⁵ See Comments of the Michigan Internet & Telecommunications Alliance and TelNet Worldwide, Inc., at p. 3 (stating on the issue of disconnecting 9-1-1 trunks that “the incumbent refused to process TelNet’s disconnection

important quality control issues;¹⁶ (5) problems associated with less than full 9-1-1 selective router (i.e., full 9-1-1 tandem) transitions to the new 9-1-1 network provider and problems associated with trying to split wireline rate centers;¹⁷ (6) carrier of last resort questions and other issues that may be associated with higher-service cost rural areas;¹⁸ (7) risks and benefits of having too little or too much regulation;¹⁹ (8) the imperative necessity for 9-1-1 networks to evolve with the rest of modern telecommunications services toward IP technology;²⁰ and (9) the implication of answers to the above issues for both IP-based enhancements to the current 9-1-

orders and continued to charge TelNet for such no longer needed service” and that “[w]hen TelNet balked at paying, the incumbent ultimately threatened TelNet with disconnection of TelNet’s interconnection trunks, an action, which would have put TelNet out of business”); *see also* Comments of Central Telephone Company of Virginia D/B/A Embarq and United Telephone Southeast LLC D/B/A Embarq, at p. 5 (“Having competitive providers of 911 service means PSAPs and carriers providing service in the state will need to provision new trunks whenever competitors enter the market”).

¹⁶ *See* Comments of the Independent Telephone & Telecommunications Alliance, at p. 5 (“In a proceeding addressing the competitive provision of 911, the Commission must determine not only whether the competitive 911 provider’s service offering would improve customer choice or bring additional value, but also critical quality control issues that must attend the provision of 911 services”).

¹⁷ *See* Comments of Verizon, at p. 6 (“Verizon would have to develop some new call-sorting capability in those end offices”).

¹⁸ *See* Comments of AT&T, Inc., at p. 11 (“Unlike the existing 911/E911 network providers (*i.e.*, ILECs) that have developed most of the nation’s 911/E911 network architecture, and use it to serve both rural and urban communities, some market entrants may elect to cherry pick PSAP customers in comparatively low-cost, densely populated metropolitan (*i.e.*, the most profitable) areas and leave the less profitable, sparsely populated, higher service-cost areas for the carriers of last resort (‘COLR’) – the ILECs”).

¹⁹ *Cf.*, Comments of Verizon, at p. 11 (“If Intrado cannot reach agreement on interconnection arrangements with these other carriers, their calls to Intrado-served PSAPs will not go through” and at p. 6 (“Intrado proposes to separately charge Verizon for interconnecting at the POIs on Intrado’s network”) *with* Comments of AT&T, Inc., at p. 9 (“Commercial negotiations for wholesale inputs are appropriate mechanisms to enable carriers and SSPs to make the necessary arrangements needed at mutually acceptable prices”) and at p. 10 (“Aggressive price regulation by the Commission and state regulators will not incent the investment and innovation that the 911/E911 market needs”).

²⁰ *See* Comments of Intrado Inc. and Intrado Communications of Virginia, Inc., at p. 19 (“As the nation completes its transition toward a truly competitive telecommunications market, driven in large part by the utility and flexibility of IP technology, its 911/E911 system must also evolve”); *see also* Comments of AT&T, Inc., at p. 5 (“Accordingly, the technology for, and functionality of 911/E911 services must continue to evolve, as rapidly as practicable, in order to meet needs and demands (of callers *and* responders) in such increasingly complex local, regional and national emergency response environments”).

1/E9-1-1 system and full-featured NG9-1-1 systems.²¹ Therefore, as stated in our initial comments, we respectfully urge the Commission to promptly initiate a “local competition” type proceeding associated with IP-enabled 9-1-1 and NG9-1-1 systems.

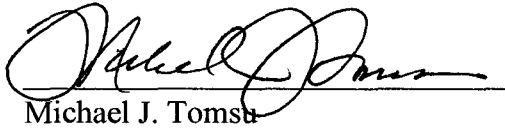
II.

Conclusion

The Joint Public Safety 9-1-1 Entities appreciate the opportunity to submit these reply comments and respectfully urge the Commission to initiate a “local competition” type proceeding on 9-1-1 network services and IP-enabled 9-1-1 and NG9-1-1 systems consistent with our comments.

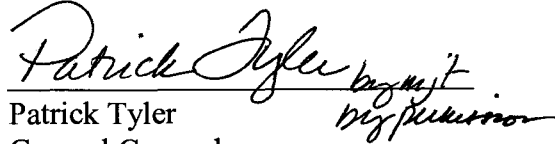
²¹ See *supra* fn 9.

Respectfully submitted,



Michael J. Tomsu
Vinson & Elkins L.L.P.
2801 Via Fortuna, Suite 100
Austin, Texas 78746
512-542-8527
512-236-3211 (fax)
mtomsu@velaw.com

On behalf of the Texas 9-1-1 Alliance



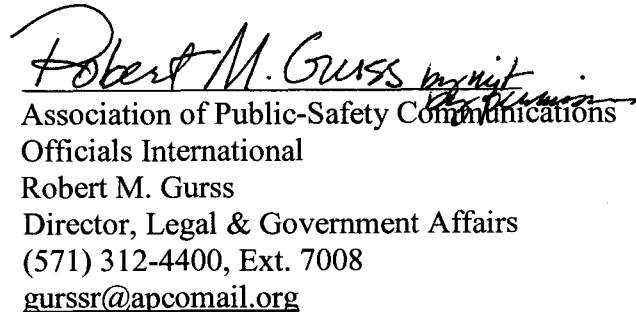
Patrick Tyler
General Counsel
Commission on State Emergency
Communications
333 Guadalupe Street, Suite 2-212
Austin, Texas 78701-3942
512-305-6915
512-305-6937 (fax)
Patrick.tyler@csec.state.tx.us

On behalf of the Texas Commission on State
Emergency Communications

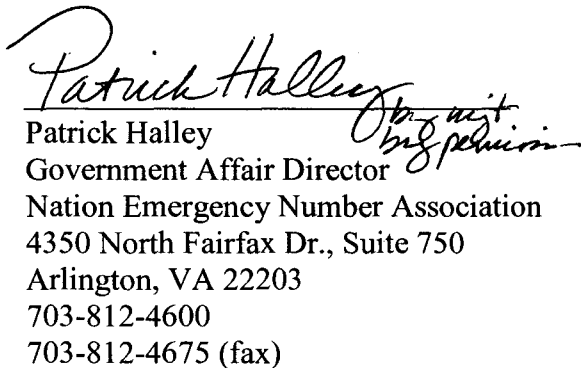


Melissa Tutton
President

On behalf of the Texas Municipal Emergency
Communication Districts Association



Association of Public-Safety Communications
Officials International
Robert M. Gurss
Director, Legal & Government Affairs
(571) 312-4400, Ext. 7008
gurssr@apcomail.org



Patrick Halley
Government Affairs Director
Nation Emergency Number Association
4350 North Fairfax Dr., Suite 750
Arlington, VA 22203
703-812-4600
703-812-4675 (fax)

On the comments:

Richard A. Muscat
Bexar Metro 9-1-1 Network District

July 21, 2009